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Brad A. Armstrong  
P.O. Box 1419  
Paradise, CA 95967

EXAMINER

EASTHOM, KARL D

ART UNIT

PAPER NUMBER

2832

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4

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/955,838

Applicant(s)

Armstrong

Examiner

Karl Easthom

Art Unit

2832

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Jan 8, 2002
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 4 20) ☐ Other: \_\_\_\_\_

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-5, 7-9, 11, 13-15, 17, 20-21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of U.S. Patent No. 5999084, and claims 4-5 and 13-15 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of U.S. Patent No. 6351205. Although the conflicting claims are not identical, they are not patentably distinct from each other because :

It appears that certain elements or functional language such as "further positioned for receiving force" is missing from the instant claims 1-3, but it would have been obvious to include or not to include such language since the pressure sensitive material as claimed in '084 must

receive such force or it would not create an analog sensor as claimed. Claims 7-8 of the instant claims are obvious since claim 8 of '884 recites pressure sensitive analog variable -conductance material, while claim 8 recites variable in terms of resistivity, the two terms being simply synonyms at best. Claim 7 of the instant claim is a broader recitation which would have been obvious to write as such in order to capture more subject matter as compared to that of '084.

The remaining claims appear to be minor variations of claim 7, 10 or 11 of '084 amounting to no more than either rewording or making the claims a little broader. Such modifications would have been obvious in order to eliminate unnecessary parts and their function, or to simply broaden or alter the scope of the claim.

Claims 4-5 and 13-15 appear to be obvious structure associated with the "use" claims 7-8 of '205 - that is, the "use" claims must necessarily be performed using the structure claimed in the instant claims.

3. Claims 6, 10, 12, 16, 19, and 22 are rejected under the judicially created doctrine of double patenting over claims 1-11 of U. S. Patent No. 5,999,084 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: Applicant fails to claim the dome cap of '084 is metal in claims thereat. However, that cap is disclosed as metal 16 in '084 where it is hatched as such in Fig. 12.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application

which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968).

See also MPEP § 804.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-2, 4-5, 7-9, 11, 13-15, 17-18, 20-21, and 23-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Furukawa (JP5-87760)(supplied by applicant). Furukawa discloses the claimed invention at Fig. 2 where the snap-through action is due to the restoring of 30, and 33 provides the analog sensor that is pressure-sensitive. It is assumed that the device is a "snap-through" device as claimed since it has a threshold of finger pressure below which the device returns to its normal upwards state absent the finger pressure. In claims 9 and 15, the dome part - the lower part of 30 with 31, and the actuator - the top part of 30, are integral. In claims 1-2 and 7-8, the housing appears as part of the controller 10 at Fig. 1, with portions of the actuator 30 disclosed. (As an alternative, Kramer discloses an actuator 22 with a housing 23 that would meet the claim). See below.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-2 and 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Furukawa (JP5-87760) in view of Kramer. As noted above, here in the alternative, Furukawa discloses the claims except the housing and the actuator held in part by the housing. The '760 device is an improvement over the Kramer types of devices that are push button switches, so that it would have been obvious to employ the housing 23 and separate actuator 22 of Kramer with the Furukawa device in order to better protect the components and make same separable.

8. Assuming terminal disclaimers are provided, claims 6, 10, 12, 16, 19, and 22 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Primarily, the metallic dome-cap would not have been obvious with the analog structure recited, since the dome cap of Furukawa is insulating. It is also noted that the device of Kambic (IBMTDB) and Murata (GB 2113920) are not analog sensors or devices because the devices are on/off switches, while the analog structures, devices or sensors of the instant claims are analog in the sense that a continuum of states is sensed. For a further discussion, see Mitchell where Fig. 7 disclose curves 29' and 29 utilizing on/off types of material due to the avalanche effect, while curves 25-29 disclose analog types of materials. It would not have been obvious to employ the latter type of material with the snap-through type metallic dome cap as claimed in combination, since it would appear that using the dome cap would alter the analog characteristics of the device, where the device of Furukawa employs an insulative dome cap, and there is no suggestion as to how to employ the metal where there is an insulator. While applicant admits at page 2 of his application a common prior art switch has a metal dome-cap,

there is no suggestion to combine that with Furakawa for reasons noted. Parsons does not disclose a "snap" type of device.

9. NOTE: The information disclosure statement filed fails to comply with 37 CFR 1.98(a)(1), which requires a list of all patents, publications, or other information submitted for consideration by the Office. The item noted as QUESTAL ORBIT QWEB is not in proper format. All pages must be described, such as patent abstract, with title, publication dates, patent numbers, etc. or other information to properly keep record of what is filed. The items have been placed in the application file, but the information referred to therein has not been considered.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karl Easthom whose telephone number is 703-308-3306. The examiner can normally be reached on M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Elvin Enad, can be reached on (703) 308-7619. The fax phone number for the organization where this application or proceeding is assigned is 703-308-7722.

  
KARL D. EASTHOM  
PRIMARY EXAMINER